

## CHAPTER 98-132

### Committee Substitute for Senate Bill No. 1450

An act relating to intangible personal property taxes; amending s. 199.023, F.S.; defining the terms “ministerial function” and “processing activity” for purposes of ch. 199, F.S.; amending s. 199.052, F.S.; increasing the minimum amount of annual intangible personal property tax which a person may be required to pay; providing that personal property of a trust will not have taxable situs in this state under specified circumstances; repealing s. 199.052(11), F.S., relating to returns filed by banking organizations, to conform; amending s. 199.175, F.S., relating to taxable situs; amending s. 199.175, F.S.; providing for situs of credit or charge card receivables owned, managed, or controlled by a bank or savings association; conforming provisions; amending s. 199.185, F.S.; revising the exemption from intangible personal property taxes for certain property held in trust; revising the exemption for real estate mortgage investment conduits; partially exempting accounts receivable arising out of a trade or business from intangible personal property taxes; providing legislative intent to fully exempt such assets in subsequent years; exempting stock options granted to employees by an employer and stock purchased by employees under certain conditions from intangible personal property taxes; providing a full, rather than partial, exemption from the annual tax for banks and savings associations and providing for application of the exemption to organizations defined by s. 220.62(1), (2), (3), and (4), F.S.; exempting insurers from the annual tax; repealing s. 199.104, F.S., which provides a credit against the annual tax for banks and savings associations; repealing s. 220.68, F.S., which provides a credit against the franchise tax imposed on banks and savings associations based on intangible tax paid; amending s. 199.282, F.S.; revising the penalty for late filing of an annual intangible tax return; providing a limitation on combined delinquency and late filing penalties; revising the penalty for omitting or undervaluing property on an annual return; amending s. 199.292, F.S.; revising the distribution of intangible tax revenues; amending s. 220.02, F.S., relating to order of credits against the corporate income tax or franchise tax, and s. 624.509, F.S., relating to the insurance premium tax; conforming provisions; providing application; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (13) and (14) are added to section 199.023, Florida Statutes, to read:

199.023 Definitions.—As used in this chapter:

(13) “Ministerial function” means an act the performance of which does not involve the use of discretion or judgment.

(14) "Processing activity" means an activity undertaken to administer or service intangible personal property in accordance with such terms, guidelines, criteria, or directions as are provided solely by the owner of the property. Methods, systems, or techniques chosen by the processor to implement such terms, guidelines, criteria, or directions are not considered the exercise of management or control.

Section 2. Subsection (2) of section 199.052, Florida Statutes, is amended, and subsection (15) is added to that section, to read:

199.052 Annual tax returns; payment of annual tax.—

(2) No person shall be required to pay the annual tax in any year when the aggregate annual tax upon the person's intangible personal property, after exemptions, would be less than ~~\$60~~ \$5. In such case, an annual return is not required unless the taxpayer is a corporation, a banking organization claiming the exemption provided in s. 199.185(1)(i), or an agent or fiduciary of whom the department requires an informational return. Agents and fiduciaries shall report for each person for whom they hold intangible personal property if the aggregate annual tax on such person is \$60 or more than ~~\$5~~.

(15) If a bank or savings association, as defined in s. 220.62, acts as a fiduciary or agent of a trust other than as a trustee, intangible personal property of the trust shall not have taxable situs in this state pursuant to s. 199.175 solely by virtue of the management or control of the bank or savings association.

Section 3. Effective July 1, 2000, subsection (11) of section 199.052, Florida Statutes, is repealed, and subsection (2) of that section, as amended by this act, is amended to read:

199.052 Annual tax returns; payment of annual tax.—

(2) No person shall be required to pay the annual tax in any year when the aggregate annual tax upon the person's intangible personal property, after exemptions, would be less than ~~\$60~~. In such case, an annual return is not required unless the taxpayer is a corporation, ~~a banking organization claiming the exemption provided in s. 199.185(1)(i),~~ or an agent or fiduciary of whom the department requires an informational return. Agents and fiduciaries shall report for each person for whom they hold intangible personal property if the aggregate annual tax on such person is ~~\$60 or more~~.

Section 4. Paragraph (c) is added to subsection (1) of section 199.175, Florida Statutes, to read:

199.175 Taxable situs.—For purposes of the annual tax imposed under this chapter:

(1) Intangible personal property shall have a taxable situs in this state when it is owned, managed, or controlled by any person domiciled in this state on January 1 of the tax year. Such intangibles shall be subject to annual taxation under this chapter, unless the person who owns, manages, or controls them is specifically exempt or unless the property is specifically

exempt. This provision shall apply regardless of where the evidence of the intangible property is kept; where the intangible is created, approved, or paid; or where business may be conducted from which the intangible arises. The fact that a Florida corporation owns the stock of an out-of-state corporation and manages and controls such corporation from a location in this state shall not operate to give a taxable situs in this state to the intangibles owned by the out-of-state corporation, which intangibles arise out of business transacted outside this state.

(c) Notwithstanding the provisions of this subsection, intangibles that are credit card receivables or charge card receivables or related lines of credit or loans that would otherwise be deemed to have taxable situs in this state solely because they are owned, managed, or controlled by a bank or savings association as defined in s. 220.62, or an affiliate or subsidiary thereof, which is domiciled in this state shall be treated as having a taxable situs in this state only when the debt represented by the intangible is owed by a customer who is domiciled in this state. As used in this paragraph, the terms “credit card receivables” and “charge card receivables” do not include trade or service receivables as defined in s. 864 of the Internal Revenue Code of 1986, as amended.

Section 5. Effective July 1, 2000, paragraph (a) of subsection (1) and paragraph (b) of subsection (2) of section 199.175, Florida Statutes, are amended to read:

199.175 Taxable situs.—For purposes of the annual tax imposed under this chapter:

(1) Intangible personal property shall have a taxable situs in this state when it is owned, managed, or controlled by any person domiciled in this state on January 1 of the tax year. Such intangibles shall be subject to annual taxation under this chapter, unless the person who owns, manages, or controls them is specifically exempt or unless the property is specifically exempt. This provision shall apply regardless of where the evidence of the intangible property is kept; where the intangible is created, approved, or paid; or where business may be conducted from which the intangible arises. The fact that a Florida corporation owns the stock of an out-of-state corporation and manages and controls such corporation from a location in this state shall not operate to give a taxable situs in this state to the intangibles owned by the out-of-state corporation, which intangibles arise out of business transacted outside this state.

(a) For the purposes of this chapter, “any person domiciled in this state” means:

1. Any natural person who is a legal resident of this state;
2. Any ~~bank or financial institution~~, business, business trust as described in chapter 609, company, corporation, ~~insurance company~~, partnership, or other artificial entity organized or created under the law of this state, except a trust; or

3. Any person, including a trust, who has established a commercial domicile in this state.

(2) Intangible personal property shall have a taxable situs in this state when it is deemed to have a business situs in this state and it is owned, managed, or controlled by a person transacting business in this state, even though the owner may claim a domicile elsewhere. This provision shall apply regardless of where the evidence of the intangible is kept or where the intangible is created, approved, or paid.

(b) Notwithstanding the provisions of this subsection:

1.a. Intangibles that are credit card or charge card receivables or related lines of credit or loans shall be deemed to have business situs in this state only when the debt represented by such intangibles is owed by a customer who is domiciled in this state.

b. The performance of ministerial functions relating to, or the processing of, credit card or charge card receivables in this state for the owner of such receivables is not sufficient to support a finding that the owner is transacting business in this state.

c. The term "credit card or charge card receivables" does not include trade or service receivables as defined in s. 864 of the Internal Revenue Code of 1986, as amended.

2. An intangible owned by a real estate mortgage investment conduit, a real estate investment trust, or a regulated investment company, as those terms are defined in the United States Internal Revenue Code of 1986, as amended, shall not be deemed to have a taxable situs in this state unless such entity has its legal or commercial domicile in this state.

3. The ownership of any interest in a participation or syndication loan or pool of loans, notes, or receivables shall not be sufficient to support a finding that the owner of such interest is transacting business in this state. For the purposes of this subparagraph, a participation or syndication loan is a loan in which more than one lender is a creditor to a common borrower, and a participation or syndication interest in a pool of loans, notes, or receivables is an interest acquired from the originator or initial creditor with respect to the loans, notes, or receivables constituting the pool.

~~4. Assets owned by a foreign insurance company, as defined in s. 624.06, shall not be deemed to have a business situs in this state if they are managed and controlled outside this state.~~

Section 6. Subsections (1) and (5) of section 199.185, Florida Statutes, are amended, and subsection (8) is added to that section, to read:

199.185 Property exempted from annual and nonrecurring taxes.—

(1) The following intangible personal property shall be exempt from the annual and nonrecurring taxes imposed by this chapter:

- (a) Money.
- (b) Franchises.
- (c) Any interest as a partner in a partnership, either general or limited, other than any interest as a limited partner in a limited partnership registered with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended.
- (d) Notes, bonds, and other obligations issued by the State of Florida or its municipalities, counties, and other taxing districts, or by the United States Government and its agencies.
- (e) Intangible personal property held in trust pursuant to any stock bonus, pension, or profit-sharing plan or any individual retirement account which is qualified under s. 530, s. 401, ~~or s. 408~~, or s. 408A of the United States Internal Revenue Code, 26 U.S.C. ss. 530, 401, and 408, and 408A, as amended.
- (f) Intangible personal property held under a retirement plan of a Florida-based corporation exempt from federal income tax under s. 501(c)(6) of the United States Internal Revenue Code, 26 U.S.C., if the primary purpose of the corporation is to support the promotion of professional sports and the retirement plan is either a qualified plan under s. 457 of the United States Internal Revenue Code or the contributions to the plan, pursuant to a ruling by the United States Internal Revenue Service, are not taxable to plan participants until actual receipt or withdrawal by the participant.
- (g) Notes and other obligations, except bonds, to the extent that such notes and obligations are secured by mortgage, deed of trust, or other lien upon real property situated outside the state.
- (h) The assets of a corporation registered under the Investment Company Act of 1940, 15 U.S.C. s. 80a-1-52, as amended.
- (i) All intangible personal property issued in or arising out of any international banking transaction and owned by a banking organization.
- (j) Units of a unit investment trust organized under an agreement or declaration of trust and registered under the Investment Company Act of 1940, as amended, whose portfolio of assets consists solely of assets exempt under this section.
- (k) Interests in real estate securitizations, including, but not limited to, real estate mortgage investment conduits (REMIC) and financial asset securitization trusts (FASITS), which that are directly or indirectly secured by or payable from notes and obligations that are in turn secured solely by a mortgage, deed of trust, or other lien upon real property situated in or outside of the state, including, but not limited to, mortgage pools, participations, and derivatives and are held as investments by banks or savings associations in compliance with regulatory agency guidelines.
- (l) One-third of the accounts receivable arising or acquired in the ordinary course of a trade or business which are owned, controlled, or managed

by a taxpayer on January 1, 1999, and thereafter. It is the intent of the Legislature that, pursuant to future legislative action, the portion of such accounts receivable exempt from taxation be increased to two-thirds for taxes levied on January 1, 2000, and further increased to all such accounts receivable on January 1, 2001, and thereafter. This exemption does not apply to accounts receivable which arise outside the taxpayer's ordinary course of trade or business. For the purposes of this chapter, the term "accounts receivable" means a business debt that is owed by another to the taxpayer or the taxpayer's assignee in the ordinary course of trade or business and is not supported by negotiable instruments. Accounts receivable include, but are not limited to, credit card receivables, charge card receivables, credit receivables, margin receivables, inventory or other floor plan financing, lease payments past due, conditional sales contracts, retail installment sales agreements, financing lease contracts, and a claim against a debtor usually arising from sales or services rendered and which is not necessarily due or past due. The examples specified in this paragraph shall be deemed not to be supported by negotiable instruments. The term "negotiable instrument" means a written document that is legally capable of being transferred by indorsement or delivery. The term "indorsement" means the act of a payee or holder in writing his or her name on the back of an instrument without further qualifying words other than "pay to the order of" or "pay to" whereby the property is assigned and transferred to another.

(m) Stock options granted to employees by their employer pursuant to an incentive plan, if the employees cannot transfer, sell, or mortgage the options. Stock purchased by an employee from an employer pursuant to an incentive plan shall be treated as a nontaxable stock option if part of the purchase price of the stock is nonrecourse debt secured by the stock and the stock cannot be sold, transferred, or assigned by the employee until the nonrecourse debt is discharged. Such stock becomes taxable stock when it can be sold, transferred, or assigned by the employee.

(5) Those organizations ~~Every bank and savings association,~~ as defined in s. 220.62(1), (2), (3), or (4) ~~are,~~ is exempt from ~~.5 mill of the tax imposed by s. 199.032.~~

(8) Every insurer, as defined in s. 624.03, whether the insurer is authorized or unauthorized as defined in s. 624.09, is exempt from the tax imposed by s. 199.032.

Section 7. The amendment to subsection (5) and the creation of subsection (8) of section 199.185, Florida Statutes, by this section shall apply to taxes due on or after July 1, 1999.

Section 8. Effective for tax years beginning after December 31, 1999, sections 199.104 and 220.68, Florida Statutes, are repealed.

Section 9. Subsections (3) and (4) of section 199.282, Florida Statutes, are amended to read:

199.282 Penalties for violation of this chapter.—

(3)(a) If any annual or nonrecurring tax is not paid by the due date, a delinquency penalty shall be charged. The delinquency penalty shall be 10 percent of the delinquent tax for each calendar month or portion thereof from the due date until paid, up to a limit of 50 percent of the total tax not timely paid.

(b) If any annual tax return required by this chapter is not filed by the due date, a penalty of 10 ~~30~~ percent of the tax due with the return shall be charged for each calendar month or portion thereof during which the return remains unfiled, up to a limit of 50 percent of the total tax due for each year or portion of the year during which the return remains unfiled.

For any penalty assessed under this subsection, the combined total for all penalties assessed under paragraphs (a) and (b) shall not exceed 10 percent per calendar month, up to a limit of 50 percent of the total tax due.

(4) If an annual tax return is filed and property is either omitted from it or undervalued, then a specific penalty shall be charged. The specific penalty shall be 10 ~~30~~ percent of the tax attributable to each omitted item or to each undervaluation. No delinquency or late filing penalty shall be charged with respect to any undervaluation.

Section 10. Subsection (3) of section 199.292, Florida Statutes, is amended to read:

199.292 Disposition of intangible personal property taxes.—All intangible personal property taxes collected pursuant to this chapter shall be placed in a special fund designated as the “Intangible Tax Trust Fund.” The fund shall be disbursed as follows:

(3) ~~An amount equal to 33.5 percent~~ Of the remaining intangible personal property taxes collected, an amount equal to 35.3 percent in state fiscal year 1998-1999 and an amount equal to 37.7 percent in each year thereafter, shall be transferred to the Revenue Sharing Trust Fund for Counties. ~~An amount equal to 66.5 percent~~ Of the remaining taxes collected, an amount equal to 64.7 percent in state fiscal year 1998-1999 and an amount equal to 62.3 percent in each year thereafter, shall be transferred to the General Revenue Fund of the state.

Section 11. Effective July 1, 2000, subsection (10) of section 220.02, Florida Statutes, is amended to read:

220.02 Legislative intent.—

(10) It is the intent of the Legislature that credits against either the corporate income tax or the franchise tax be applied in the following order: ~~those enumerated in s. 220.68,~~ those enumerated in s. 631.719(1), those enumerated in s. 631.705, those enumerated in s. 220.18, those enumerated in s. 631.828, those enumerated in s. 220.181, those enumerated in s. 220.183, those enumerated in s. 220.182, those enumerated in s. 220.1895, those enumerated in s. 221.02, those enumerated in s. 220.184, those enumerated in s. 220.186, and those enumerated in s. 220.188.

Section 12. Effective July 1, 2000, subsections (4), (7), and (8) of section 624.509, Florida Statutes, are amended to read:

624.509 Premium tax; rate and computation.—

(4) ~~The intangible tax imposed under chapter 199,~~ The income tax imposed under chapter 220, and the emergency excise tax imposed under chapter 221 which are paid by any insurer shall be credited against, and to the extent thereof shall discharge, the liability for tax imposed by this section for the annual period in which such tax payments are made. As to any insurer issuing policies insuring against loss or damage from the risks of fire, tornado, and certain casualty lines, the tax imposed by this section, as intended and contemplated by this subsection, shall be construed to mean the net amount of such tax remaining after there has been credited thereon such gross premium receipts tax as may be payable by such insurer in pursuance of the imposition of such tax by any incorporated cities or towns in the state for firefighters' relief and pension funds and police officers' retirement funds maintained in such cities or towns, as provided in and by relevant provisions of the Florida Statutes. For purposes of this subsection, payments of estimated income tax under chapter 220 and of estimated emergency excise tax under chapter 221 shall be deemed paid either at the time the insurer actually files its annual returns under chapter 220 or at the time such returns are required to be filed, whichever first occurs, and not at such earlier time as such payments of estimated tax are actually made.

(7) Credits and deductions against the tax imposed by this section shall be taken in the following order: deductions for assessments made pursuant to s. 440.51; credits for taxes paid under ss. 175.101 and 185.08; credits for income taxes paid under chapter 220, the emergency excise tax paid under chapter 221 and the credit allowed under subsection (5), as these credits are limited by subsection (6); ~~credits for intangible taxes paid under chapter 199;~~ all other available credits and deductions.

(8) From and after July 1, 1980, the premium tax authorized by this section shall not be imposed upon receipts of annuity premiums or considerations paid by holders in this state ~~and from and after July 1, 1991, the intangible tax imposed by chapter 199 shall not be imposed on assets equal to the statutory legal reserves of annuity products maintained by insurance companies on behalf of their holders~~ if the tax savings derived are credited to the annuity holders. Upon request by the Department of Revenue, any insurer availing itself of this provision shall submit to the department evidence which establishes that the tax savings derived have been credited to annuity holders. As used in this subsection, the term "holders" shall be deemed to include employers contributing to an employee's pension, annuity, or profit-sharing plan.

Section 13. For tax years beginning after December 31, 1999, no credit under section 624.509(4), Florida Statutes, for intangible tax imposed under chapter 199, Florida Statutes, shall be available.

Section 14. Except as otherwise expressly provided in this act, this act shall take effect July 1, 1998.



Became a law without the Governor's approval May 22, 1998.

Filed in Office Secretary of State May 21, 1998.